IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Gurlal Singh. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 70/2002
against the order dated 3-11-2001 passed
by the Sessions Judge, Hanumangarh, in
Criminal Revision No. Nil/2001.

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Date of Order: September 04, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. R.S. Gill, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Mridul Jain, for the non-petitioner No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner has challenged the order dated 3-11-2001 passed by the Sessions Judge, Hanumangarh (for short, "the Revisional Court" hereinafter), whereby the application filed by the petitioner challenging the competency and jurisdiction of the Revisional Court to hear the revision petition filed by the complainant/non-petitioner, was dismissed.

Heard learned counsel for the parties.

A similar controversy came to be decided by the Madhya Pradesh High Court in Gurumukh Das Vs. State of Madhya Pradesh, 2000 Cri. L.J. 2419, wherein it was held that in the light of the enhanced powers of the Sessions Court provided under Section 399 of the Code, it cannot be said that in no case of acquittal, the Sessions Court can have power of revision. It was further held as under:-

> "If there is total irregularity and illegality committed by Magistrate, resulting in injustice in the trial at any stage, the Sessions Court should be competent to interfere in revisional proceedings even if the final order passed by Magistrate is that of acquittal. In such exceptional cases, it makes no difference that an appeal would also lie. In the peculiar circumstances, the jurisdiction of Sessions Court to interfere suo motu in exercise of revisional powers, remains intact. Section 401, sub-sec. (4) provides that when a person is entitled to file an appeal, he cannot approach the High Court by a petition for revision. Clause (5) of that section, however, at the same time also lays down when such a revision petition is filed before the High Court under a belief that the appeal does not lie, the High Court may in the interest of justice, treat it as petition for appeal. It, thus, becomes clear that to achieve the ends of justice and to prevent miscarriage of justice by procedure or orders of the Courts below, the Sessions Judge act in revision, even if there is a judgment of acquittal by the Court below, of course this does not mean in all cases. Such exercise of power is limited necessarily to those cases where the Magistrate has acted with gross illegality in the procedure or totally ignored the law or material on record."

Section 399 of the Code deals with Sessions Judge's Power of revision and reads as under:-

> "399. Sessions Judge's powers of revision.-(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of Section 401.
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> (2)Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), () and (5) of Section 401 shall, so far as may be, apply to such proceeding and reference in the said sub-sections to the High Court shall be construed as reference to the Sessions Judge.
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> (3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court."

Thus, from the plain reading of sub-section (2) of Section 399 of the Code, it is clear that where any proceeding by way of revision is commenced before the Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of Section 401 shall, so far as may be, apply to such proceedings and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

In view of the provisions of Section 399 of the Code and keeping in view the decision of the Madhya Pradesh High Court in Gurumukh Das Vs. State of Madhya Pradesh (supra), in my view, the Court below was justified in dismissing the petition

challenging the competency and jurisdiction of the Sessions Court and the impugned order does not require any interference.

The criminal miscellaneous petition is, therefore, dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

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